

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ENCOMPASS INSURANCE COMPANY OF )	
MASSACHUSETTS, )	
)	
Plaintiff/Counterclaim Defendant, )	
)	CIVIL ACTION NO. 05-11693 RCL
v. )	
)	
JOSEPH D. GIAMPA, FREDERICK T. )	
GIAMPA, ADVANCED SPINE CENTERS, )	
INC. d/b/a FIRST SPINE REHAB, FUTURE )	
MANAGEMENT CORPORATION, FUTURE )	
MANAGEMENT BUSINESS TRUST, )	
EDWARD KENNEDY, BRIAN J. )	
CULLINEY, D.C., and JENNIFER )	
MCCONNELL, D.C., )	
)	
Defendants/Counterclaim Plaintiffs. )	
)	

**PLAINTIFF/COUNTERCLAIM DEFENDANT'S OMNIBUS MOTION  
TO DISMISS DEFENDANTS/COUNTERCLAIM PLAINTIFFS' COUNTERCLAIMS**

Pursuant to Fed. R. Civ. P. 8, 9(b), 12(b)(1), and 12(b)(6), Plaintiff/Counterclaim Defendant Encompass Insurance Company of Massachusetts (“Encompass”) hereby moves this Court to dismiss each of Defendants/Counterclaim Plaintiffs’ Counterclaims<sup>1</sup> in their entirety because: (1) each of the Counterclaims are barred by the absolute litigation privilege; and (2) each of the Counterclaims fails to state a claim upon which relief can be granted. The grounds for this Motion are more fully set forth in the accompanying memorandum of law.

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<sup>1</sup> Three separate counterclaims were filed: one by Joseph D. Giampa, Frederick T. Giampa and Advanced Spine Centers, Inc. (the “Giampa Counterclaim”); one by Edward Kennedy (the “Kennedy Counterclaim”); and one by Brian J. Culliney and Jennifer McConnell (“the Culliney Counterclaim”) (collectively, the “Counterclaims”). As requested by the Court at the parties’ January 11, 2007 scheduling conference, Encompass has consolidated its motions to dismiss into this Omnibus submission.

WHEREFORE, the Court should dismiss the Counterclaims in their entirety with prejudice.

Respectfully submitted,  
ENCOMPASS INSURANCE COMPANY OF  
MASSACHUSETTS  
By its Attorneys,

/s/ Kevin J. Lesinski

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DATED: February 20, 2007

**CERTIFICATE OF SERVICE**

I, Kevin J. Lesinski, hereby certify that on this 20<sup>th</sup> day of February, 2007, this **Omnibus Motion to Dismiss Defendants/Counterclaim Plaintiffs' Counterclaims** was filed through the CM/ECF and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Kevin J. Lesinski

Kevin J. Lesinski